



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 3<sup>rd</sup> day of March, 1999

Delta Air Lines, Inc.

Code-sharing Violations

**Served: March 3, 1999**

**CONSENT ORDER**

This Consent Order results from an investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) of the code-sharing disclosure practices of Delta Air Lines, Inc. (Delta). The order reflects a settlement of the matters disclosed during the investigation.

The Department's code-sharing disclosure rule (14 CFR 399.88) states that it is an unfair or deceptive practice under section 411 of the Federal Aviation Act (now codified as 49 U.S.C. §41712) for airlines sharing a single carrier designator code to fail to provide reasonable and timely notice to consumers of such an arrangement. Under the rule, adequate notice in direct oral communication with a consumer means that the carrier must inform the consumer that the flight will be performed by a carrier other than the carrier whose code is used and must identify the carrier actually providing the service. This notice must be given to the consumer regardless of whether the consumer makes a reservation.

The investigation of Delta revealed a significant lack of compliance with the Department's code-share notice requirements.<sup>1</sup> Department investigators conducted a recent telephone survey involving 60 test calls to Delta relating to code-sharing flights. In a substantial amount of those test calls, Delta personnel failed to provide timely notice of the code-sharing flight in accordance with the Department's requirements. In several instances Delta personnel did not provide any notice to the caller of the code-sharing arrangement, even when specifically

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<sup>1</sup> A number of the violations occurred during telephone calls regarding international code-sharing flights which are subject to the Department's code-sharing disclosure rule (14 CFR 399.88) as a condition of the Department's approval of Delta's code-share agreements.

asked. During a number of other calls the identity of the code-share operator was provided only after the investigator specifically asked for the information and/or after the caller requested a specific reservation or had booked a reservation. Overall, there was an unacceptable number of test calls in which the caller was not properly told prior to his or her reservation request, as is required by our notice requirement, of the airline actually operating the code-share service.

This is the second time Delta has violated the Department's code-sharing regulations. By Order 91-8-41, issued August 20, 1991, Delta entered into a consent agreement with the Department under which Delta agreed to the issuance of an order to cease and desist from further violations of the code-sharing disclosure rule and agreed to pay \$15,000 in compromise of civil penalties.

In response to the Enforcement Office's letter advising Delta of its findings, Delta states, without admitting any violations, that it immediately enhanced its internal policies to underscore the requirement that reservations personnel provide timely notice of the carrier actually operating a code-share service to any caller who inquires about a code-share flight. In addition, Delta states that it instituted major modifications to its reservation procedures with increased emphasis on the Department's disclosure requirements, which modifications include revisions to its training programs in new hire, refresher and recurrent training; internal self-policing and audits; personnel performance/evaluation based on factors which include compliance with the disclosure requirements; computer reservations system display prompts/reminders to assist reservations personnel; and periodic reminder bulletins/memoranda reinforcing the disclosure requirements.

Delta also noted that the last order relating to Delta's code share disclosure compliance occurred over seven years ago and that it has had an unblemished record during that period, which included one DOT audit that resulted in no adverse findings. Delta states that it had in place systems to ensure compliance, that communications with reservations personnel by consumers is a very fluid and dynamic process, and that disclosure of the code-sharing arrangements occurred at some point during the test call in 51 (85%) of the 60 test calls. Delta states that while section 399.88 requires "timely" notice, it does not set forth guidelines for when "timely" notice is to be given. Moreover, according to Delta, Delta was not aware that the Department interpreted section 399.88 to require agents to provide disclosure information at the earliest opportunity, without prompting, even if the consumer had not yet asked to reserve the flight. Delta further states that these circumstances and Delta's immediate actions to improve

its compliance programs should weigh heavily in mitigation of any enforcement action.

We believe that Delta's failure to adequately disclose code-sharing flights is likely to have caused consumer harm and warrants enforcement action, including the imposition of a civil penalty payment. We are particularly concerned with Delta's lack of compliance in view of the past enforcement action against Delta for its similar violations discussed above.

In order to avoid litigation, and without admitting the alleged violations, Delta has agreed to settle this matter with the Office of Aviation Enforcement and Proceedings and enter into this consent order to cease and desist. Delta has also agreed to pay \$25,000 in compromise of the potential civil penalties otherwise assessable under 49 U.S.C. §46301. The Enforcement Office believes that the assessment of a civil penalty of \$25,000 in this instance is warranted in light of the nature and extent of the code-sharing disclosure problem in question. This order and the \$25,000 penalty it assesses will provide a strong incentive to all carriers to ensure that they do not violate our code-sharing rules in the future.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

**ACCORDINGLY,**

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Delta Air Lines, Inc., has violated 14 CFR 399.88(2) and Order 91-8-41 by failing to provide adequate disclosure of code-sharing arrangements to consumers;
3. We order Delta Air Lines, Inc. to cease and desist from the activities described in paragraph 2 above; and
4. Delta Air Lines, Inc. shall pay \$25,000 as a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2 of this order. Payment shall be made within 15 days of the date of issuance of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance

with the enclosed instructions. Failure to pay the penalty as ordered will subject Delta Air Lines, Inc. to assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.

By:

ROSALIND A. KNAPP  
Deputy General Counsel

(SEAL)

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